

**REMARKS**

**DETAILED ACTION**

1. In view of newly found art applied against at least some of the pending claims, prosecution has been reopened in this application.

Applicant earnestly thanks the Examiner for recognizing the additional prior art and reopening the prosecution of the subject application.

2. The amendment filed July 7, 2005 has been entered.
3. Claims 3, 13, 21-24, 26, 32, 39-42, and 44-46 have been canceled.
4. Claims 47-48 have been added.

Applicant earnestly thanks the Examiner for recognizing the amendment filed on July 07, 2005 as well as the respective amendments identified in items 3 and 4.

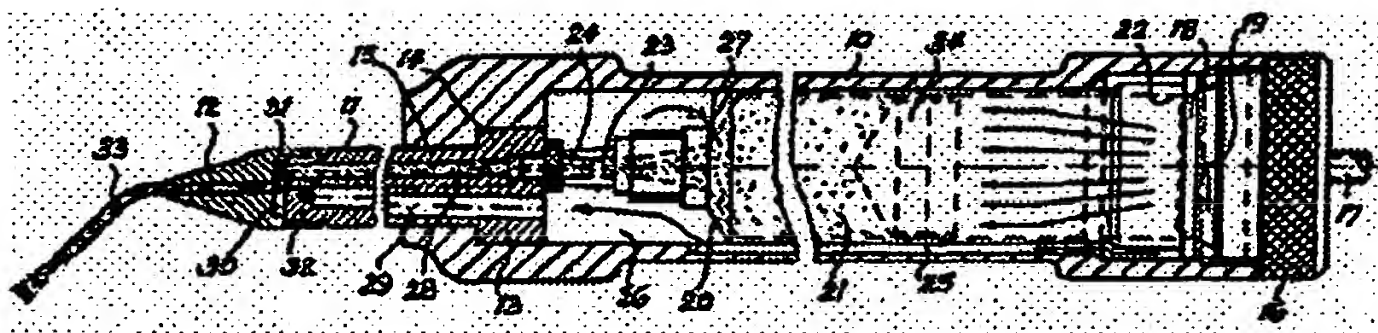
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The Examiner has rejected Claims 1-2, 4-5, 9-12, 14-15, 19, 29-31, 33-34, and 38 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. Herold et al disclose an apparatus for propelling a stream of particulate matter comprising all of the subject matter set forth in the claims above. A compressed gas source is delivered to a mixing chamber through a gas receiving port, and mixes with abrasive within the chamber, followed by discharge through a discharge conduit to strike a target material. The limitation of the particle-directing tube being "bendable" is a functional limitation which is deemed sufficiently broad to read on the discharge tube of Herold et al. While already shown as having a bend, the material in Herold et al is certainly capable of being bent. The device of Herold et al is intended for hand-held use for abrading the surfaces of a tooth located in a patient's mouth, and contains a pre-charged amount of particulate matter. No additional particulate matter is introduced by the gas delivery conduit, thus providing a disposable apparatus upon exhaustion of the particulate matter disposed within the mixing chamber, if so desired.

Herold discloses the claimed invention (Fig. 1, col. 2, line 58 to col. 4, line 34) including: a) a chamber 10 having a sidewall, a first end wall at one end of the chamber and a second end wall at an opposite end of the chamber, wherein at least one of the first end wall and the second end wall abuts and is contiguous with the sidewall of the chamber. **It is noted that chamber 10 is a reservoir for partially storing particular matter 21. and further a mixing chamber when pressurized air entering through opening 27 to fluidize the sand in this reservoir (col. 3. lines 30-35):** b) a gas-receiving port 17 in the first end wall; c) a gas-delivery conduit 25 disposed within the chamber and extending in fluid communication from the discharge port towards the first end wall; d) a discharge port (not referenced numbered) in the second end wall; e) a discharge conduit (starting at reference numeral 31) disposed within the chamber and extending in fluid communication from the discharge port towards the first end wall; and e) an elongated particle-directing tube 33 disposed external the chamber, a proximal end 24 of the particle-directing tube in fluid communication with the discharge port.



**Herold further teaches the utilization of a replaceable cartridge, therefore the unit is designed to be reused upon exhaustion of the particulate matter**

**disposed within the cartridge, and clearly NOT DESIGNED (with emphasis) to be disposed of upon depletion of the particulate matter.**

Respective to Independent Claims 1, 10, and 29, each independent claim has been amended (~~Strikethrough~~ for deletes; underline for add) to comprise the following limitation:

“the mixing chamber is pre-charged with a predetermined amount of particulate matter and wherein the gas delivery conduit is not conducive to the replenishment of particulate matter, thus providing ~~a disposable apparatus~~ an apparatus that is designed to be disposed of upon the exhaustion of the particulate matter disposed within the mixing chamber”

The Independent Claims, as amended, clearly comprise the limitation of having “**an apparatus that is designed to be disposed of upon the exhaustion of the particulate matter disposed within the mixing chamber.**” Applicant believes this amendment more distinctly and clearly defines the claimed invention over Harold, as Harold clearly teaches an apparatus that is designed to be reused, and not one that clearly designed to be disposed of upon depletion of the particulate matter.

Applicant believes the rejection of independent Claims 1, 10, and 29 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. has been overcome by amendment and remarks herein. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Independent Claims 1, 10, and 29 based upon the amendments and remarks herein.

Claims 2, 4-5, and 9 depend directly or indirectly from Independent Claim 1. Applicant believes the rejection of Independent Claim 1 has been overcome by

amendment and remarks herein. Therefore, Applicant believes the rejection of Depending Claims 2, 4-5, and 9 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. has been overcome. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Depending Claims 2, 4-5, and 9 based upon the amendments and remarks respective to Independent Claim 1.

Claims 12,14-15, and 19 depend directly or indirectly from Independent Claim 10. Applicant believes the rejection of Independent Claim 10 has been overcome by amendment and remarks herein. Therefore, Applicant believes the rejection of Depending Claims 12,14-15, and 19 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. has been overcome. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Depending Claims 12,14-15, and 19 based upon the amendments and remarks respective to Independent Claim 10.

Claims 30-31, 33-34, and 38 depend directly or indirectly from Independent Claim 29. Applicant believes the rejection of Independent Claim 29 has been overcome by amendment and remarks herein. Therefore, Applicant believes the rejection of Depending Claims 30-31, 33-34, and 38 under 35 U.S.C. 102(b) as being clearly anticipated by Herold, et al. has been overcome. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Depending Claims 30-31, 33-34, and 38 based upon the amendments and remarks respective to Independent Claim 29.

Regarding claims 5, 15, and 34, all of which are respective to a bendable particulate matter directing tube – Although Herold may show a bent tube, Applicant claims a tube that is manually bendable. Herold, et al. fails to teach a manually bendable tip. Respectfully, the limitation of “the particle-directing tube being “bendable” is a functional limitation which is deemed sufficiently broad to read on the discharge tube of Herold et al. While already shown as having a bend, the material in Herold et al is certainly capable of being bent” does not teach a manually bendable tube, even moreso, would not be manually bendable. Therefore, Applicant believes these claims are patentable, independent of the Independent Claims.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The Examiner has rejected Claims 6-8, 16-18, and 35-37 under 35 U.S.C. 103(a) as being unpatentable over Herold et al in view of Dougherty. Dougherty discloses the known use of color coding of containers to identify the contents therein, and further disclose the known use of an end cap (70) for sealing the discharge end of a chamber to prevent the contents from being discharged. The use of color coding to help identify

the contents of the chamber would have been obvious in view of Dougherty. Such color coding is used throughout industry for discriminating between similar looking containers, and for identifying their contents. To further provide an end cap at the distal end of the discharge conduit to prevent inadvertent discharge of the media from the chamber when not in use, would have been obvious in view of Dougherty.

Claims 6, 8, 16, 18, 35, and 37 comprise the element of color coding to identify to the type of particulate matter contained within said chamber. Color coding is only applicable where an object would have a reason to color code / identify said material. The Claim has been rejected on the assumption that a cartridge is utilized for the particulate matter. Applicant's invention does not utilize a particulate matter cartridge. Applicant has presented that the particulate matter apparatus does not use or direct the use of a particulate matter cartridge within said apparatus. Therefore, the claimed invention is unique to Herold, et al. It is not known to provide color coding indication for a particulate propellant apparatus, as the Applicant is believed to be the first to provide such a device that is pre-filled with particulate matter. All of the teachings are directed towards color coding of cartridges. Applicant teaches away from the use of a cartridge. It would not be obvious or with any motivation to combine color coding with a particulate propellant apparatus as the particulate propellant apparatus are normally filled for use, not provided with a material.

Applicant believes the rejection of Claims 6, 8, 16, 18, 35, and 37 under 35 U.S.C. 103(a) as being unpatentable over Herold, et al. in view of Dougherty has been overcome by the remarks herein. Therefore, Applicant believes the rejection of Claims 6, 8, 16, 18, 35, and 37 under 35 U.S.C. 103(a) as being unpatentable over Herold, et al. in view of Dougherty has been overcome. Applicant earnestly requests the Examiner reconsider and withdraw the rejection of Depending Claims 6, 8, 16, 18, 35, and 37 based upon the remarks herein.

Claims 7, 17, and 36 comprise the limitation of “comprising at least one of a gas delivery port cap and a discharge end cap”. Dougherty teaches the application of an end cap for a cartridge, not an end cap for a pre-filled particulate matter delivery apparatus. It is not known to provide end caps to contain particulate matter within a pre-filled propellant apparatus, as the Applicant is believed to be the first to provide such a device that is pre-filled with particulate matter. All of the teachings are directed towards a fill-able apparatus or utilization of a cartridge. Applicant teaches a disposable apparatus and away from the use of a cartridge.

Applicant believes the rejection of Claims 7, 17, and 36 under 35 U.S.C. 103(a) as being unpatentable over Herold, et al. in view of Dougherty has been overcome by the remarks herein. Therefore, Applicant believes the rejection of Claims 7, 17, and 36 under 35 U.S.C. 103(a) as being unpatentable over Herold, et al. in view of Dougherty has been overcome. Applicant earnestly requests the Examiner reconsider and



withdraw the rejection of Depending Claims 7, 17, and 36 based upon the remarks herein.

9. Claims 20, 25, 27-28, 43, and 47-48 are allowed.

Applicant respectfully thanks the Examiner for the allowance of Claims 20, 25, 27-28, 43, and 47-48.

### **CONCLUSIONS**

Applicants believe the amendments and remarks submitted herein, herein provide a complete response to the Office Action mailed on July 21st, 2005. Claims 1, 2, 4-12, 14-20, 25, 27-31, 33-38, 43, 47 and 48 remain in the application. Applicant believes the remaining claims are in condition for allowance. Applicant earnestly requests the Examiner reconsider and withdraw the rejections of claims 1, 2, 4-12, 14-20, 25, 27-31, 33-38, 43, 47 and 48.

The Examiner has established a shortened statutory period of three (3) months for response to the Office Action. Applicant has responded to the Office Action on or before October 21st, 2005 with a proper certificate of correspondence, being submitted in less than Three Months from the date of mailing of the subject Office Action. Therefore, the Applicant believes the response is timely and that no additional fees are

required at this time . Applicant believes the response provided is complete. Applicant believes the amendments have not introduced any new matter.

The present application, after entry of this amendment, comprises thirty-three (33) claims, including four (4) independent claims. Applicant has already submitted sufficient fees with the Original application for thirty-eight (38) claims, including four (4) independent claims. Applicant, therefore, believes that no additional fee respective to claims is currently due.

If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, a telephone call to the Agent of Record (Allen Hertz) at (561) 883-0115 (Office)(Please leave a message) or (561) 716-3915 (Cell phone) is respectfully solicited.

Respectfully submitted,

  
Allen D. Hertz

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**31877**

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